

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 17 July 2024

**Public Authority:** Waverley Borough Council  
**Address:** The Burys  
Goldalming  
Surrey  
GU7 1HR

#### **Decision (including any steps ordered)**

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1. The complainant has made a multi-part request for information about court charges. Waverley Borough Council ("the council") disclosed information in respect of part 1 of the request. The complainant disputed that further information was held in respect of part 1. During the course of investigation, the council informed the Commissioner that further information had been identified.
2. The Commissioner's decision, therefore, is that the council holds further specific information in respect of part 1 of the request, which has not been disclosed or subject to a valid refusal notice. However, the Commissioner is satisfied that no further information is held beyond this.
3. The Commissioner requires the council to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to part 1 of the request in which the newly identified information is either disclosed, or a valid refusal notice issued for any exemption it intends to rely on. The Commissioner refers the council to the observations contained in 'Other matters' in issuing this fresh response.
4. The council must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 28 October 2023, the complainant wrote to the council and requested information in the following terms:

“On 4th July 2018 the The Court of Protection, Civil Proceedings and Magistrates’ Courts Fees (Amendment) Order 2018 Came into force.  
<https://www.legislation.gov.uk/uksi/2018...>

An impact assessment was made by the Ministry of Justice on the 3rd of July 2018 which detailed this reduction. This effectively reduced the costs the Court charges the Council for liability orders, from £3 down to 50p and this change was widely reported at the time.

1. Please show documentary proof of court costs recharged to defendants for:
  - a) summons and
  - b) liability Orders by Waverley Borough Council (WBC) for the last 5 years.
2. If WBC re-charged any figure other than the figure of 50p after 4th July 2018 as prescribed by law, then please show any documentary or other evidence which shows any refunds were given to defendants or the costs budget was reduced by this amount in this matter and proof of the method of the said refund.
3. If WBC did charge the lawful figure of 50p, please provide documentary proof that this figure was correctly included in the summons and liability order costs budget for the past 5 years.
4. Please supply the minutes or staff notes of any meeting held by WBC which discussed the refunds received.
5. Please supply copies of any communication between WBC and HMCTS and/or MOJ and/or the IRRV regarding this matter.
6. Please supply details and a copy of any refunds issued to WBC by any government, body in respect of the overcharges as detailed above dealing the name and rank of the person responsible at WBC who is named on the remittance.
7. Please confirm whether any refunds were passed on to the defendants in any council tax court cases by WBC.
8. Please show any internal documentation, phone transcripts or recordings which contains consideration of the legal position or advice from the IRRV to staff of WBC in respect of:

- a) any liability to issue refunds, or
  - b) the resulting lawfulness of the liability orders that contained costs which could have therefore been outside the scope of the relevant caselaw (Nicolson vs Haringey) or guidance as advised by the Justices' Clerks' Society, or The Ministry of Justice
  - c) Whether WBC received any communication challenging the lawfulness of liability orders based upon the application of incorrect costs for this reason of failure to rebate Court costs refunds."
6. The council responded on 24 November 2023. It stated that no information was held.
  7. Following an internal review the council wrote to the complainant on 10 January 2024. It disclosed information (namely "Court Fees Charged for the past 5 years", and a spreadsheet detailing compensation provided by the Courts to the council). It also provided wider advice and assistance to explain its response that the majority of information was not held.
  8. The complainant wrote further to the council on 16 January 2024 to dispute that some specific information had not been disclosed.
  9. The council responded on 16 February. It disclosed further information (namely a breakdown of summons cost and liability order costs) and reiterated its position that all information had otherwise been provided to the request.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 18 February 2024 to complain about the way their request for information had been handled.
11. When submitting their complaint to the Commissioner, the complainant explained that the following was the basis of their complaint:

"Failure to provide documentary proof of court costs recharged to defendants for:

- a) summons and
- b) liability Orders by Waverley Borough Council (WBC) for the last 5 years.

WBC are under a legal duty, before levying costs on their summons, to have properly accounted for each element in arriving at the figure and ensuring that each element it claims is in fact incurred in connection with the issue of the summons.

The information I have requested should be available for public

scrutiny based on the principle of open justice and your legal obligations as set in case law, specifically Nicolson, R (on the application of) v Tottenham Magistrates & Anor [2015] EWHC 1252 (Admin) (06 May 2015)  
<https://www.bailii.org/ew/cases/EWHC/Admin/2015/1252.html>

Additionally, WBC are legislatively bound to “provide a breakdown of their enforcement costs to the court. This might be in the form of a calculation of the aggregate enforcement costs for a period, divided by the number of cases brought to court. It must be available to the court when it considers the sum to order in the case.”

Furthermore, “A copy of the breakdown should be given to and retained by the court as part of the records.”

This is taken from JUSTICES’ CLERKS’ SOCIETY Council Tax Enforcement located:

[https://www.whatdotheyknow.com/request/what\\_is\\_the\\_correct\\_court\\_proced/response/2281568/attach/4/Council%20Tax%20Guide%](https://www.whatdotheyknow.com/request/what_is_the_correct_court_proced/response/2281568/attach/4/Council%20Tax%20Guide%20)

12. The Commissioner understands that the complainant’s concerns relate specifically to part 1 of the request.
13. The Commissioner therefore considers that the scope of his investigation is whether the council has therefore disclosed all held information in respect of part 1 of the request.

## **Reasons for decision**

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### **Section 1 – General right of access to information**

14. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
15. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
16. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any – or additional – information which falls within the scope of the request (or was held at the time of the request).

### The Commissioner's investigation

17. The Commissioner referred the council to the basis of the complainant's concern (as quoted in paragraph 11). The council was asked to consider this, and address the following:

- Was the information described by the complainant held?
- If yes, did it fall within scope of the original request.
- If no, how this had been verified through searches.

18. The council responded as follows:

- The information was held.
- The information fell within scope of the original request. Some of this information had already been disclosed to the complainant on 10 January 2024 and 16 February 2024. However, further specific information was held, which had not been disclosed; the council considered that this information was likely to be exempt. The council detailed that this information had been identified through consultation with specialist officers within the council's finance team (which is the team most relevant to the information sought by this request) and that no other relevant information was known to be held.

### The Commissioner's conclusion

19. The complaint to the Commissioner was that the council had not identified all relevant held information in respect of part 1 of the request.

20. The council has since informed the Commissioner that further specific information has been identified following appropriate searches. A copy of this information has been provided to the Commissioner.

21. Having considered this, the Commissioner must therefore conclude that the council holds further specific information which has not been disclosed, or else subject to a valid refusal notice (under section 17 of FOIA) for any exemption it intends to rely on.

22. However, the Commissioner is satisfied that appropriate searches have now been carried out, and that there is no evidence available to the Commissioner that suggests further information is held beyond this.

23. The Commissioner requires the council to consider the newly identified information and issue a fresh response to part 1 of the request in which

it either discloses it, or, should it intend to withhold some or all of it, issue a valid refusal notice for any exemption it intends to rely upon.

## Other matters

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24. The Commissioner reminds the council that when responding to a request, it must issue a valid refusal notice (under section 17 of FOIA) for any information that it seeks to withhold under an exemption. The Commissioner's guidance for public authorities on section 17 can be accessed at:  
  
<https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-17-refusing-a-request-writing-a-refusal-notice/>
25. In this case, the council has informed the Commissioner that it considers the newly identified information is likely to be exempt under section 40(2). The council has provided a copy of this information to the Commissioner, being two documents. The council has indicated that it believes these documents fall under section 40(2) in their entirety.
26. The Commissioner reminds the council, that when issuing a fresh response, it should carefully consider the content of the documents to determine whether they need to be withheld in their entirety, or whether it is appropriate to disclose in a redacted format.

## **Right of appeal**

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27. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
29. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Daniel Perry**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**